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# SCOTLAND MOURNING:

OR, 1607/1168.  
A Short DISCOVERY

OF THE  
Sad CONSEQUENCES  
Which accompanies the Delay of  
the settling Judicatories in that  
N A T I O N.

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By Robert Pittilloh Advocate.

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I CHRON. 22. 16.  
*Arise therefore, and be doing, and the Lord be with thee.*

ESTHER 4. 16.  
*I will go in, which is not according to law, and if I perish, I perish.*

L O N D O N,

Printed in the year 1659.

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## SCOTLAND MOURNING:

O R,

A short Discovery of the Sad Consequences which  
accompanies the delay of the settling  
Judicatories in that Nation.

**T**O every thing there is a season and a time to every purpose under the Heaven, saith the Wiseman, and among other things a time to keep silence, and a time to speak: And if ever there was a fit time to speak, it is when the Cause of the Dumb is pleaded, and inquiry not only done: But when there is hazard that it shall be established by a Law; If full information be not given concerning the truth of Affairs: The consideration whereof makes me look upon it as my duty at this time to give a word of Information to the Supreme Authority, concerning the desolate condition of the Nation of Scotland, by want of Justice, and the sad affliction, it should further undergoe, if the settling of Judicatories shall be delayed for any long space: upon closing of the Union of any other pretence whatsoever. It may seem to some impertinent for me to use such freedom in so high a concernment; but beside that, every member of the body, albeit, the meanest ought naturally to care for the good of the whole; in time of a dangerous Tempest, every Passenger in a Ship ought to put to his hand; and albeit in a Calme, his service would have been accomplished Officious, yet in such a case when the Storme is over, if he have been instrumentall in preserving the Ship, none will defraud him of his deserved Commendation. I am not ignorant of the envy and hatred it may procure, at the hands of some of my Countrymen here; knowing how much some of them have already smitten me with the Tongue, making their Arrows flye in secret upon groundless imaginations against me: and if I durst follow the prudentiall consideration of self interest, I should put my Seal to whatsoever they say; but when I consider that the fearfull and unbelieving shall receive the same dispensations of wrath from God: And that Job reckons it among the chief of his vindications from the Calumnies of his Friends, did I fear a great multitude, or did the contempt of Families terrifie me, that I kept silence, and went not out of the Doore: I am taught intentionally not to do any thing against the Truth, but for the Truth; neither shall I write any thing which justly may give offence to any sober spirit, knowing that men may be of different apprehensions, being all of pure hearts

and

and innocent hands : and if by this, Truth all shall be discovered Lover of Truth, will joyce therein, if otherwise, I have but lost my labour, and published my own weaknes.

The thing to be considered is, *Whether it be fit and expedient to delay the setting of the Courts of Justice, in Scotland, and Officers necessary, for carrying on the Administration of Justice before them, till the Union betwixt Scotland and England be closed or not.* ] The Negative we contend for.

For clearing whereof, We shall first examine the meaning of this expedient, secondly the reasons thereof, and thirdly remonstrate the many sad consequences that accompany it, which shall be as so many Arguments against it. As to the first, The meaning and sence of it cannot be, till the Parliament ratifie and confirm the Act of Union past in the time of the late Protector, Because it is humbly conceived, neither could it stand with the honour of the Parliament, *sic impli- cito*, to ratifie that Act, nor if it had been intended, would the Parliament or their Counsell have made any reference to Scotsmen, for considering the expediency of the setting Judicatories, before or after the closing thereof : nor had it bin worthy their consultation, seeing it is obvious to the meanest capacity, that an Act of ratification of this nature, and for setting of Judicatories, might have been past in one and the self same day at different houres, after they were prepar'd. The true and genuine sence of it then must be, till the Union betwixt the two Nations be closed in a legall and solid way, to the rationall satisfaction of both. For effectuating whereof, It is humbly conceived,

1. Commissioners lawfully chosen must come from *Scotland* for Treating of the matter, or meet with Commissioners of Parliament upon the place appoiated by them for that Effect For to pass an Act of Union without their consent, were to make a forced Marriage without consent of Parties; and if any in their name should consent, without Commission, such consent would be *ipso jure null*, as to the thing, and *crimen falsi*, in a high degree to the Actors.
2. Examination of the legall elections and qualifications, for *non fieri* & *non rite fieri in jure* *parificatur*.
3. The matter must be debated, and conditions of the Union held forth pondered, and accepted, and if Commissioners of Parliament shall be sent to *Scotland* for that purpose, if any thing fall out dubious, exprelles must be sent up to the Parliament for resolution, for the answers whereof they must wait before they bring the matter to a period.
4. The Act must be prepared and past.

Lastly, Before writes can be emitted in name of the keepers of the liberties of England and Scotland Commissioners, from *Scotland* lawfully chosen by warrant of the Parliament, must be set down in Parliament as sharers in the Authority. For it seems contrary to Law and reason, that the Parliament of England can be cald keepers of the liberty of Scotland, till Members of that Nation be a part of their number, having an intrinsick repugance in it self, in so far as it is to them

merely a Provinciall Government, Diametrally opposit to the liberty of a free People, to be governed only by the representatives of another Nation. There being as yet no Order of Parliament Issued forth for choosing Commissioners in *Scotland*, for Treating of the Union, nor Commissioners of Parliament appointed, (if it shall be found needfull, to meet with them upon the place, the Journey being long, the matter weighty, and of great concernment, the Persons interested many, of various judgments, and different abilities; with many other dilatory circumstances considered: It cannot in reason be presumed, that before the expiring of five or six Moneths time, albeit gone about with the greatest alacrity, the Union can be brought to such perfection, as that Commissioners of *Scotland* lawfully chosen, may be sitting in the Parliament of *England*, without which they cannot be cald keepers of the liberty of *Scotland*: besides that it is not impossible that the closing of this Union may be interrupted for at me, by unexpected emergencies: So that in plain english, the sense of it in it self is, *It is fit and expedient to delay the setting of the Courts of Justice in Scotland, &c. as yet for five or six Moneths in coming, and if at that time the Union be not closed; that accordingly this be delayed*, albeit I am so charitable as to believe it is not intended by those who are of this judgment, that it shall be for so long a space.

But it may be objected the Parliament may close the Union upon the consent given by the Commissioners for *Scotland*, in Anno. 1552. To which it is answered, 1. *Quod possibile est esse possibile est non esse.* 2. Those who choose wisely among probables, consider that which is most probable as the ground of her actions; and we humbly conceive, it is more probable the Parliament will not close the Union upon that consent for these reasons. First, Though it be the same Parliament: and Authority that then was, yet virtually and consequentially the consent seems to be interrupted, in so far as it was to [their Commissioners,] because of the Act of Union, past by the single Person, wherein *Scotland* was forced to acquiesce, having no power to resist. 2. That consent being now near seaven years old, cannot be presumed to be so effectually for engaging *Scotland* cordially to concurre with *England* in the common concernment as it would be, being renewed: if a man had so long been kept at a distance from his intended Wife, a more intimate renovation of their acquaintance, would be thought necessary before, the consumation of the Marriage. 3. The exercise of the present Authority having been for so long a time interrupted, it is humbly conceived it will be found necessary that by a new consent, *Scotland* do acknowledge the present Authority, and that they are lawfully again cald to the exercise thereof: Lastly, The nature and conditions of the Union having never as yet been examined and approved by the present Parliament, when they fall upon the debate, if it shall be found necessary that any thing therein be altered, or that any new thing be added thereto without new representatives

representatives of the Nation, they have none to confer with about the same.

The second particular is the foundation whereon this expedient is built, or the Arguments brought for strengthening of it, which, so far as we can learn, are. 1. It would be a means to cause the Union to be slighted, forgotten, or delayed. 2. It is not fit, Writs in *Scotland* should be emitted in name of the keepers of the liberties of *England*, but *Scotland* also. To the first it is answered, If the setting of Judicatories be a ground of slighting or delaying the Union, it must be so either to the Parliament or People of *Scotland*, but neither can rationally be said, *ergo*, &c. not the first, because according to the Principles both of reason and sound Divinity, the performing of one duty is so far from indisposing them for the performance of another, that it rather habituates, and further enables them for a second: so that it were bad Logick so to reason, because the Parliament hath done one duty to *Scotland*, therefore they will neglect another. They must pardon me, to say they have hard thoughts of the Parliament of *England* without reason who fears the delay of the union because of the setting of Judicatories there, when their Army in Anno 1650. (whom they then did and to this day do own) declared in *Scotland*, *Their consciences did bear them record, they did above any thing in the world desire the union of the two Nations: and that it was their daily prayer, that those that feared the Lord in England and Scotland, might become one in the hand of the Lord, and join together in the advancement of the Kingdom of Jesus Christ, and throwing down and trampling upon the seat of the Beast: And when in order to the setting of this union, the present Parliament in Anno 1652, with the first convenience, sent their Commissioners to Scotland for that effect; Not the second; First, Because it cannot be imagined that the people of Scotland will be averse from the union: are any people so foolish, as to choose rather to be a Province than a free people? Secondly, It is evident in reason, the more favours the Parliament confers upon them, the more cordiall they will be in the union, and cheerfull thereto, the greater loveliness one extreame perceives in the other, the larger desire it hath to be united thereto. To the second it is answered; It cannot be conceived where the difficulty lieth, for either it must be because of the indignity *Scotland* sustains, by issuing forth Writs in name of the Keepers of the Liberty of *England*; or because some confusion will follow upon the change, when the union is closed. The first cannot be alleged, for these reasons; First, the overturning of the Government in a single Person having taken the originall of it here, it is no indignity for *Scotland* to emit Writs in name of the Keepers of the Liberty of *England*, till they may likewise with Commissioners from *Scotland*, become Keepers of the Liberties of *Scotland*, it being impossible it should be otherwise for the time. Secondly, It is known to all *England**



and Scotland, and many hundreds of thousands more, that Scotland is now under the power of the Parliament of England, as the only supreme Authority, which rules and governs them, and therefore emitting Writs which will never be published in any place but in their own Nation, can be neither an addition to, nor publication of this condition. Thirdly, It is but the continuing Writs in that same form they were in in *Anno* 1552; and thereafter till the erection of the late Protector. Fourthly, It is but the emitting Writs in that same form for the peoples good and advantage, wherein Orders of their suffering for payment of *Custom, Sess* and *Excise* are emitted. Fifthly, There can be no more absurdity for Writs to be issued forth in name of the Keepers of the Liberty of England, than for Sheriffs and Justices of Peace to keep Courts in Scotland in their name, *magis & minus non variant Speciem*: As to the second it is clear, no confusion of Process or other Writs whatsoever, can follow upon change of the Style when the union shall be closed by former experience, in so far as at the erection of the deceased Protector, no man who had a summons executed in name of the Keepers of the Liberty, &c. was ever put to the renewing of them, nor any who had an Execution upon a Charge, put to the renewing of his Letters; yea which is further, no person who had an Action depending in the late Kings time, before the Lords of Session, was put to that trouble as to begin the same *de novo*, before the Commissioners for administration of Justice, but only to waken it, notwithstanding the change of Government.

As to the third, besides many particulars which I will not enumerate, there are these sad consequences following clearly upon the delay: First, If Judicatories be not settled before the first of November (which is the time of the down sitting of the winter Session or Terme in Scotland,) neither Judges, Advocates nor Clerks, will be in readines for their employments, nor people throughout the Nation attending for Justice, by reason of the uncertainty of the sitting of the Courts, whereby, albeit there were nothing more, that Session for a great part will be rendered uneffectual: and if it be delayed a moneth or two longer, altogether useless. Secondly, There will be little work prepared for them, albeit both parties and Officers of Court were present, in so far as there are neither Judges having power to grant deliverances upon Bills, nor a Signet for granting summons, nor Messengers in all Scotland for executing; but after the Courts of Justice are settled, persners must first raise their summons; secondly, send Messengers at Arms to cite the defenders personally or at their dwelling places, giving them twenty seven free days before they be tied to compare, betwixt the day of their citation and their compeerance, if within the Nation in most of Actions, besides the

the time which must be allowed to the Messenger for going to their dwellings, which in some parts of that Nation in storms of the winter season, may be as long: and 60 days if the defendant be without the Nation after the citation, at the Market Cross of *Endenburrongh* Peer and shore of *Leith*. Thirdly, When they are returned and called by the Clerks, the Defendant and his Advocate must have a competent time to see the pursuers Claim or Libell, and prepare him for the dispute, where upon the same inconvenience formerly mentioned will follow.

Thirdly, No person in *Scotland* can at this day charge his debtor to make payment of any somme of money or other duty resting to him upon Bond, Obligation or Contract, albeit there be many thousands of that Nation in this condition, and many hundreds of Widows, Orphans, and fatherless Children, which have no other way for getting their bread: and generally the most part of all Creditors have been much delayed from payment of their money, first by the late Act of Debitor and Creditor, ordaining them to take Land for their debts, and many thereafter by the late Act taking of Forfeitures, ordaining their Creditors to quit a great part of their Interest, and take Land for their somme at a dear purchase: which might presently be supplied by sending the Courts of Justice and Officers needfull for them: so that it is a gross misrepresentation of affairs in a false glass, to affirm there is no need of sending these Courts till the time of the down sitting of the winter Session or Terme, in regard the Summer Terme is past, the prejudice which is sustained by want of execution upon Bonds, Obligations and Contracts, being beyond that which is sustained by want of a Session or Terme, whereupon Creditors may have the ultimate of the Law, (if suspension do not intervene) as fully and freely in time of vacancy, as in Terme time: Albeit now paying personall sell out of these Estates by Law, they are put in an incapacity of obtaining any personall estate either for paying thereof or entertaining their own life by want of Law.

Fourthly, Albeit a Creditor see his Debtor disposing or dilapidating his whole Estate, to the utter ruin of him and his family, he can neither serve Inhibition against him, nor appryle from him, but with a forced patience must behold the destruction of himself and nearest relations, in their worldly being: for which, sending of Judicatories as is before said will be a present remedy.

Fifthly, The Sheriffs being the only persons in that Nation at present authorized by the Parliament to sit in Judgment in matters Civil, of whom some are ignorant, and others corrupt, (as witness the many advocations from them yearly, with the suspensions and reductions of their decreets past before the High Court of Justice,) have now power to carry on Processes albeit incompetent for them, without contradiction, and give our Decrets though never so wicked, without controule: and the suffering Defendant hath neither power to advocate his Action from them, while it is depending, nor to suspend when it is decreed: but